IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 732 OF 2006
IN
NOTICE OF MOTION NO. 2857 OF 2006
IN
SUIT NO. 2430 OF 2006

Anuradha Kamalakar Pejawar] .. Appellant (Ori.Plaintiff)

Versus

1. Saroj Satish Trasikar & 3 ors.] .. Respondents (Ori.Defendants)

Mr. Y.S. Jahagirdar, senior counsel i/b Mr. N.D. Jaywant for the appellant.

Mr. D.V. Merchant i/b M/s. L.C. Tolat & Co. for the respondents No.1-3.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 20TH NOVEMBER, 2006

P.C. :

. We heard Mr. Y.S. Jahagirdar, the senior counsel for the appellant.

2. The ad-interim relief has been declined by the learned Motion Judge on two counts. First, the learned Motion Judge observed that a false statement has been made that in the earlier Suit No.1640 of 2002 filed before the City Civil Court, Mumbai, an ad-interim order came to be passed and, second, that though the factum of

Will said to have been executed by the plaintiff's father came to notice of the plaintiff in the year 2002, the present Suit has been filed in the year 2006 for which there is no explanation.

4. That the statement that the City Civil Court passed ad-interim order is factually incorrect is admitted by the senior counsel for the appellant-plaintiff. The senior counsel sought to submit that this factual incorrect statement has no bearing on the merits of the case and, therefore, ought not to have been taken into consideration for refusal to grant ad-interim relief. The submission does not impress us. It is not that the statement about the ad-interim relief was made inadvertently, but seems to have been made by the plaintiff to secure ad-interim relief in the present Suit by such misrepresentation. Obviously, therefore, the learned Motion Judge was justified in taking into consideration this misrepresentation while dealing with the prayer for ad-interim relief.

5. From paragraph 10 of the Plaint, it is clear that in the reply that was filed by the defendants No.1 to 3 in opposition to the Notice of Motion in Suit No.1640 of 2002, way back in the year 2002 itself, it

was stated that their father had executed the Will dated 6th September, 1971, bequeathing his property to plaintiff's brother. Despite this fact having come to the notice of the plaintiff, the present Suit has been filed in the year 2006. The plaintiff has not explained the reason for waiting for four years despite having come to know of the Will dated 6th September, 1971 in the year 2002.

6. Refusal to grant ad-interim relief by the learned Motion Judge, therefore, cannot be faulted. Appeal is dismissed in limine.

7. Obviously the aforesaid observations are only for the purposes of disposal of the Appeal and shall not influence consideration of the Notice of Motion on merits.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]